Indefinite Delivery Contracts

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Agenda

- Applicable Guidance
- Describe/Identify Indefinite Delivery (ID) Contracts
- Distinguish Between ID Contracts
- Discuss Applicability of ID Contracts
- Ordering from ID Contracts
- Applicable Provisions and Clauses
- ***Solicit & Award ID Contract (November Field Training and 4th Quarter Employment Training)***

Applicable Regulations

- FAR Subpart 16.5 -- Indefinite Delivery Contracts
- DFARS Subpart 216.5 -- Indefinite Delivery Contracts
- AFFARS 5316.5 -- Indefinite Delivery Contracts

General

16.501-2 -- General.

- Used to acquire supplies and/or services when ***the exact times and/or exact quantities of future deliveries are not known at the time of contract award***.
- Three types of indefinite-delivery contracts:
  - Definite-quantity
  - Requirements (a.k.a. delivery/task order Ks)
  - Indefinite-quantity (a.k.a. delivery/task order Ks)

Task/Delivery Orders

16.501-1 -- Definitions

- "Delivery order contract" means a ***contract for supplies*** that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.
- "Task order contract" means a ***contract for services*** that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

General

- Advantages:
  - Minimum Stock Levels
  - Direct shipment to end users
  - Any cost/pricing arrangement under FAR Part 16
  - Remedies provide some incentive for Ktr to perform
- ***Disadvantage(s)***
  - Government is obligated for a least a minimum dollar amount for supplies or services
  - Requires individual funding documents for each order

Definite Quantity Contracts

16.502 -- Definite-Quantity Contracts

- Provides for delivery of a ***definite quantity*** of specific supplies or services for a ***fixed period***, with ***deliveries or performance to be scheduled at designated locations upon order***
- May be used when it can be determined in advance that:
  - A definite quantity of supplies or services will be required during the contract period and
  - The supplies or services are readily available or will be available after a short lead time.

Requirements Contracts

16.503 -- Requirements Contracts

- ***All actual purchase requirements*** of the designated Government activity for specified supplies or services ***are acquired from a single contractor with deliveries or performance to be scheduled by placing (task/delivery) orders*** with the contractor.
- May be appropriate for acquiring ***any supplies or services*** when the Government ***anticipates recurring requirements*** but ***cannot predetermine the precise quantities of supplies or services*** that designated Government activities will need during a definite period.

Requirements Contracts

16.503 -- Requirements Contracts

- Solicitation & Contract shall state realistic estimated total quantity
- Estimated quantity doesn't constitute Gov't obligation to Ktr
- Estimate should be based on most current info available to CO
- ***Government property furnished for repair***
  - When a requirements contract is used to acquire work (*e.g.*, repair, modification, or overhaul) on existing items of Government property, the CO shall specify in the Schedule that failure of the Government to furnish such items in the amounts or quantities described in the Schedule as "estimated" or "maximum" will not entitle the contractor to any equitable adjustment in price under the Government Property clause of the contract.

In-Definite Quantity Contracts

16.504 -- Indefinite-Quantity Contracts

- Indefinite quantity of supplies or services
- Fixed time period
- Gov’t places orders for individual requirements
- Stated maximum/***minimum*** limits (stated in terms of quantities or dollar values)

In-Definite Quantity Contracts

16.504 -- Indefinite-Quantity Contracts

- Contract ***must*** require Gov't to ***order a minimum quantity of supplies and services***, which the contractor is obligated to furnish
- Contractor further ***obligated*** to furnish supplies and services up to the stated maximum if ordered by Gov't
- Minimum ***must be more than a nominal amount***, but is ***not required to exceed actual anticipated need***

In-Definite Quantity Contracts

16.504 -- Indefinite-Quantity Contracts

- Contract ***may*** also specify additional limits
  - Maximum/minimum quantities Gov't may order under each task/delivery order
  - Maximum quantities of supplies/services Gov't may under during a specific time period

In-Definite Quantity Contracts

16.504 -- Indefinite-Quantity Contracts

- Mandatory requirements for solicitations and contracts
  - Specify time period including options
  - Specify total minimum and maximum of supplies & services Gov’t will acquire
  - Include description of the scope, nature, complexity and purpose of the acquisition
  - Gov’t procedure for issuing orders (how, who, what, when, where)

In-Definite Quantity Contracts

16.504 -- Indefinite-Quantity Contracts

- Mandatory requirements for solicitations and contracts
  - Identify activities authorized to issue orders
  - Authorization for placing oral orders, provided that they are confirmed in writing
  - Procedures and selection criteria to provide awardees a ***fair opportunity to be considered*** for an order when ***multiple awards*** are made
  - Identify task/delivery order ombudsman is ***multiple awards*** are made

In-Definite Quantity Contracts

16.504 -- Indefinite-Quantity Contracts

- ***Statutory multiple award preference*** (not apply to architect-engineer contracts subject to subpart 36.6. procedures)
- "…the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources."

In-Definite Quantity Contracts

216.501-1 “Multiple award contract,” as used in this subpart, means--

(1) A multiple award task order contract entered into in accordance with FAR 16.504(c) ***(statutory multiple award preference)***; or

(2) Any other indefinite-delivery, indefinite-quantity contract that an agency enters into with two or more sources under the same solicitation.

In-Definite Quantity Contracts

16.504 -- Indefinite-Quantity Contracts

- The contracting officer must determine whether ***multiple awards*** are appropriate as part of acquisition planning and consider the following:
  - Scope and complexity of the contract requirement.
  - Expected duration and frequency of task or delivery orders.
  - The mix of resources a contractor must have to perform expected task or delivery order requirements.
  - The ability to maintain competition among the awardees throughout the contracts' period of performance.

In-Definite Quantity Contracts

16.504 -- Indefinite-Quantity Contracts

- The contracting officer must not use the ***multiple award*** approach if:
  - Only one Ktr is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;
  - Based on the CO's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;
  - Expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

In-Definite Quantity Contracts

16.504 -- Indefinite-Quantity Contracts

- Projected orders are so integrally related that only one Ktr can reasonably perform the work;
- Total estimated value of the contract is less than the SAT; or
- Multiple awards would not be in the best interests of the Government.

- CO must document decision ***(determination & findings)*** whether or not to use multiple awards in the acquisition plan/contract file. CO may determine that a class of acquisitions is inappropriate for multiple awards.

Ordering

16.505 -- Ordering

- General
  - Orders not synopsized
  - Full description of supplies and services that are within scope, period of performance and maximum value of contract
  - Performance based work statements to maximum possible extent for services
  - ***Orders placed by any medium specified in contract***

Ordering

16.505 -- Ordering

- Task/Delivery Order Content
  - Date of order
  - Contract number and order number
  - For supplies or services, CLIN, description, quantity, unit price/estimated cost/fee
  - Delivery/performance schedule
  - Place of delivery/performance
  - Packaging, packing, and shipping instructions
  - Method of payment/payment office if not listed in contract

Ordering

16.505 -- Ordering

- No protest under Subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract (10 U.S.C. 2304c(d) and 41 U.S.C. 253j(d)).

Ordering

16.505 -- Ordering.

- Ordering under Multiple Award Contracts
  - **Task and Delivery Order Ombudsman**. The head of the agency shall designate a task-order contract and delivery-order contract ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

Ordering

16.505 -- Ordering

- Ordering under Multiple Award Contracts
  - CO must provide each awardee a fair opportunity to be considered for each order exceeding $2,500 issued under multiple delivery-order contracts or multiple task-order contracts, except when:
    - Agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;
    - Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;
    - The order must be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.
    - It is necessary to place an order to satisfy a minimum guarantee.

Ordering

16.505 -- Ordering.

- Ordering under Multiple Award Contracts
  - CO may exercise broad discretion in developing appropriate order placement procedures.
  - CO should keep submission requirements to a minimum
  - CO may use streamlined procedures, including oral presentations
  - CO needn’t contact each of the multiple awardees under the contract before selecting an order awardee if the CO has information available to ensure that each awardee is provided a fair opportunity to be considered for each order

Ordering

16.505 -- Ordering.

- Ordering under Multiple Award Contracts
  - Competition requirements in part 6 and the policies in subpart 15.3 do not apply to the ordering process. However, the contracting officer ***must***—
    - Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;
    - Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;
    - Tailor the procedures to each acquisition;
    - Include the procedures in the solicitation and the contract; and
    - Consider price or cost under each order as one of the factors in the selection decision.

Ordering

16.505 -- Ordering.

- Ordering under Multiple Award Contracts
  - CO should consider the following when developing procedures
    - Past performance on earlier orders under the contract, including quality, timeliness and cost control.
    - Potential impact on other orders placed with the contractor.
    - Minimum order requirements.
    - The amount of time contractors need to make informed business decisions on whether to respond to potential orders.

Ordering

16.505 -- Ordering.

- Ordering under Multiple Award Contracts
  - Whether Ktrs could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—
    - Seeking comments from 2 or more Ktrs on draft SOWs;
    - Multi-phased approach when effort required to respond to a potential order may be resource intensive, where all Ktrs are initially considered on price and other considerations as appropriate. The Ktrs most likely to submit the highest value solutions are then selected for 1-on-1 sessions with Gov't to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.

Ordering

16.505 -- Ordering.

- Ordering under Multiple Award Contracts
  - Formal evaluation plans or scoring of quotes or offers are not required.
  - **Pricing orders**. If the contract didn't establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in subpart 15.4.

Ordering

16.505 -- Ordering.

- Ordering under Multiple Award Contracts
  - **Decision documentation for orders.** CO shall document in the contract file the rationale for placement and price of each order, including:
    - Basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision.
    - Basis for using an exception to the fair opportunity process. If logical follow-on exception is used, the rationale shall describe why the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period performance, or value).

Ordering

216.505-70 Orders for services under multiple award contracts

- Applies to orders for ***services exceeding $100,000*** placed under multiple award contracts, ***instead of the procedures at FAR 16.505(b)(1) and (2)***
- Each order for ***services exceeding $100,000*** shall be placed on a ***competitive basis*** unless the contracting officer waives this requirement on the basis of a written determination that
  - The agency's need for the services is so urgent that providing a fair opportunity would result in unacceptable delays;
  - Only one awardee is capable of providing the services required at the level of quality required because the services ordered are unique or highly specialized;
  - The order must be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.
  - It is necessary to place an order to satisfy a minimum guarantee.
  - Statute expressly authorizes/requires purchase be made from specified source.

Ordering

216.505-70 Orders for services under multiple award contracts

(c) An order for services exceeding $100,000 is placed on a competitive basis ***only if*** the contracting officer--

(1) ***Provides a fair notice of the intent to make the purchase***, including a description of the work the contractor shall perform and the basis upon which the contracting officer will make the selection, ***to all contractors offering the required services under the multiple award contract***; and

(2) ***Affords all contractors*** responding to the notice a ***fair opportunity to submit an offer and have that offer fairly considered***.

Ordering

216.505-70 Orders for services under multiple award contracts

(d) When using the procedures in this subsection--

(1) The contracting officer should keep contractor submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations;

(3) The competition requirements in FAR Part 6 and the policies in FAR Subpart 15.3 do not apply to the ordering process, but the contracting officer ***shall consider price or cost*** under each order as one of the factors in the selection decision; and

(4) The contracting officer ***should consider past performance on earlier orders under the contract***, including quality, timeliness, and cost control.

Ordering

SUBPART 216.5--INDEFINITE-DELIVERY CONTRACTS

(Revised May 24, 2005)

- 216.501 General.
  - (a)((ii) Whenever an indefinite-delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670-2. ***This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within three working days of the order***.

Ordering

SUBPART 5316.5 — INDEFINITE-DELIVERY CONTRACTS

- 5316.505-90 Decentralized ordering: For contracts that authorize

decentralized ordering (i.e., ordering by a contracting office at any other location), the contracting officer with overall responsibility for the contract shall:

  - Ensure that adequate control procedures are in place before any orders are authorized; and
  - Exercise oversight of decentralized ordering throughout the period of performance under the contract to ensure that the procedures are followed.

Ordering

16.506 -- Solicitation Provisions and Contract Clauses

- Insert the clause at 52.216-18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.
- Insert a clause substantially the same as the clause at 52.216-19, Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.
- Insert the clause at 52.216-20, Definite Quantity, in solicitations and contracts when a definite-quantity contract is contemplated.

Ordering

16.506 -- Solicitation Provisions and Contract Clauses

- Insert the clause at 52.216-21, Requirements, in solicitations and contracts when a requirements contract is contemplated.
  - If the contract is for non-personal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, use the clause with its Alternate I.
  - If the contract includes ***subsistence*** for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, use the clause with its Alternate II
  - If the contract involves a ***partial small business set-aside***, use the clause with its Alternate III

Ordering

16.506 -- Solicitation Provisions and Contract Clauses

- If the contract--
  - Includes ***subsistence*** for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and
  - Involves a ***partial small business set-aside***, use the clause with its Alternate IV.

Ordering

16.506 -- Solicitation Provisions and Contract Clauses

- Insert the clause at 52.216-22, Indefinite Quantity, in solicitations and contracts when an indefinite-quantity contract is contemplated.
- Insert the provision at 52.216-27, Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and $10 million (including all options).

Ordering

5316.506 -- Solicitation Provisions and Contract Clauses

- Insert the clause at 5352.216-9000, Awarding Orders Under Multiple Award Contracts
  - Alternate I
    - Task/Delivery Order Contracts for Services/Supplies
    - Description, Delivery, and Price are Pre-established
    - Contact with contractor not required
  - Alternate II
    - Basic contract SOW is broad
    - Pricing is less precise (e.g. list of labor rates)

Summary

- Applicable Guidance
- Describe/Identify Indefinite Delivery (ID) Contracts
- Distinguish Between ID Contracts
- Discuss Applicability of ID Contracts
- Ordering from ID Contracts
- Applicable Provisions and Clauses
- ***Solicit & Award ID Contract (November Field Training and 4th Quarter Employment Training)***